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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,786	11/21/2003	Edward Paul Carlin	9431	2939

27752 7590 06/11/2008
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CINCINNATI, OH 45224

EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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06/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/719,786

Applicant(s)

CARLIN, EDWARD PAUL

Examiner

MICHAEL G. BOGART

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-7, 9-11, 13 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-7, 9-11, 13 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 April 2008 has been entered.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 5-7, 9-11, 13 and 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoelling (US 2007/0083182 A1; also published as WO 2004/028428 A1) in

view of *Smallfolk.com*

(<http://www.smallfolk.com/audioandcd/index.asp?val=brand&bname=Formative%20Years>).

Schoelling's related international application WO 2004/028428 A1 designates the US and is published in the English language.

Regarding claim 13, Schoelling teaches a tampon (130) for feminine hygiene comprising an insertion end (132), a withdrawal end (134), a length, a longitudinal axis (X), a radial axis, and an outer surface;

said tampon (130) being comprised of compressed fibrous material (136)(¶ 0055);

wherein a measured portion of said outer surface (148) of said insertion end (132) comprises a first surface area (forward portion of tampon) and a measured portion of said outer surface (145) of said withdrawal end (134) comprises a second surface area (rearward of element (152)), said second surface area lacking depressions and protuberances, wherein at least a portion of said first surface area comprises discretely-spaced (the longitudinal grooves are separate from each other) individual depressions (140) having a tear shape (see cross section of fig. 2 infra, which shows a tear-shaped depression when the diaper is viewed head on from the insertion end), wherein at least a portion of the first surface area further comprises protuberances (138)(see figures 5, 6 and 7 infra). It is noted that the protuberances and grooves do not extend rearward of element (152), where they are sealed or pressed together to form a contiguous rear outer surface.

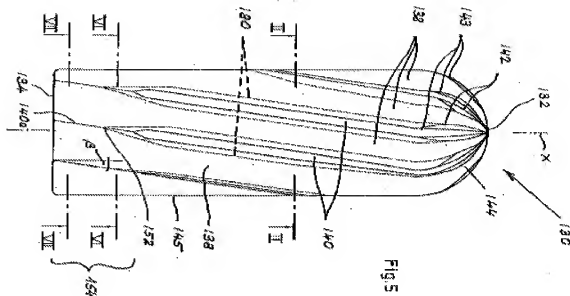


FIG 5

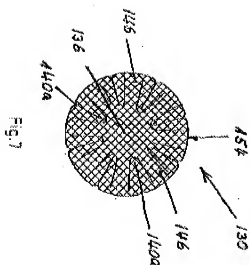


FIG 7

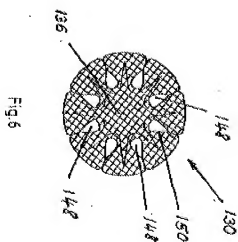


FIG 6

While the individual grooves/depressions Schoelling extend long the forward portion of the disclosed reference, they are discrete (separate) and spaced away from each other. *Merriam Webster's Online Dictionary* includes a definition of "discrete" as "constituting a separate entity"(see <http://www.merriam-webster.com/dictionary/discrete>). The claims must be given their broadest reasonable interpretation. MPEP § 2111. The words of a claim must be given

their plain meaning. MPEP § 2111.01. Applicant's specification does not provide a specific definition of "discrete" that is contrary to the interpretation provided herein.

Smallfolk.com employs a tear-shaped logo. See figure immediately below. At the time of the invention, one of ordinary skill in the art in possession of both references would have recognized that the tear-shaped depressions of Schoelling were logo-shaped.



Regarding claims 5 and 6, Schoelling teaches a diagonal pattern of evenly spaced surface depressions (42)(figure 5).

Regarding claim 7, Schoelling teaches evenly spaced depressions (140)(figure 5).

Regarding claims 9-11, Schoelling teaches protuberances (138) arranged in an evenly spaced diagonal line pattern (figure 5).

Regarding claim 18, Schoelling teaches a tampon core (136) with an essentially uniform density across its cross section.

Regarding claim 19, Schoelling teaches that the entire tampon core (136) is highly compressed (¶ 0055).

Regarding claim 20, Schoelling teaches a finger indent (56) at the withdrawal end (134)(¶ 0040).

Response to Arguments

Applicant's arguments with respect to claims 5-7, 9-11, 13 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael G. Bogart/

Examiner, Art Unit 3761

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/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761